

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Hayward, California)

DURHAM SCHOOL SERVICES, INC.¹

Employer

and

RAYMOND FREITAS, an Individual

Case 32-RD-1477

Petitioner

and

TEAMSTERS LOCAL 78,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO²

Union

DECISION AND DIRECTION OF ELECTION

Durham School Services, Inc., herein called the Employer, , is engaged in the business of providing transportation for special needs school children from its facilities located in Hayward and Livermore, California. Teamsters Local 78, International Brotherhood of Teamsters, AFL-CIO, herein called the Union, represents a collective-bargaining unit consisting of certain of the Employer's employees. Raymond Freitas, herein called the Petitioner, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Union as the collective bargaining representative of the employees in the collective-bargaining unit. A hearing officer of the

¹ The name of the Employer appears as amended at the hearing.

² The name of the Union appears as corrected, based on the wording of its name in Case 32-RC-4885, in which the Union was certified as the exclusive collective bargaining representative of the unit.

Board conducted a hearing in this matter on March 21, 2005. The Employer and the Petitioner participated in the hearing. Although the Union was given due notice of the hearing, it did not appear at, or participate in, the hearing. I note that no party has raised any arguments or presented any evidence establishing that an election should not be held in this matter, and I have concluded that an election is warranted in this case. The evidence and reasons supporting my decision are set forth below.

THE FACTS

The Employer, a California corporation, with offices and facilities located in Hayward and Livermore, California, is engaged in providing bus transportation to and from school to special needs children for a consortium of ten local public school districts in California. There are approximately 184 employees in the unit. Janet Cook is the General Manager of the two facilities. Her immediate supervisor is Chuck Moore. Moore is the Employer's Regional Vice President. His office in Concord, California, and he oversees the Employer's operations in northern California, Seattle, Washington and Oregon. Moore reports to John Elliot, who is located in the Employer's corporate headquarters in Austin, Texas.³

The Board initially certified the Union as the representative of the employees in the below-described unit on October 17, 2001 in Case 32-RC-4885. Pursuant to an election in

³ During the past twelve months, the Employer has, in the course and conduct of the above-described business operations, received gross revenues in excess of \$250,000 from a consortium made up of public school districts. The Record also shows that the Employer also does business in other states and has its corporate headquarters in Texas. I also note that, according to its website, Durham School Services was formed in 2001, when five companies were rebranded under one name—Durham School Services. The website also states that the Employer is part of National Express Corporation, which is a subsidiary of National Express Group, PLC, one of the largest transportation firms in the United Kingdom. The Employer now operates in 275 public school districts in 20 states, and its fleet has grown to include more than 8,400 school buses. I also note that in 2004, the Union stipulated to the Employer being engaged in commerce in Case 32-RD-1431 and did so in 2001 in Case 32-RC-4885. Based on the above, I find that the Employer is engaged in commerce within the meaning of the Act.

Case 32-RD-1431, the Union was again certified on January 20, 2004. Although the parties met for the purpose of negotiating an initial collective bargaining agreement, they never reached a final agreement. Approximately six months ago, the Union conducted a meeting among the unit employees to vote on a contract offer which included an increase in wages for drivers. The unit employees rejected the contract and also voted not to engage in a strike.⁴

As set forth in the 2004 certification referred to above, the Union is the collective bargaining representative of the following unit of the Employer's employees:

All full-time and regular part-time pick-up bus drivers, van drivers, aides, trainers, routers, and dispatchers employed by the Employer at its Hayward and Livermore, California facilities, excluding all mechanics, plant and office clerical employees, guards, all other employees, guards, and supervisors as defined in the Act.

ANALYSIS

It is well established that in a decertification election the bargaining unit in which the election is held must be coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955); *W.T. Grant Co.*, 179 NLRB 670 (1969); *Bell & Howell Airline Service Co.*, 185 NLRB 67 (1970); *Mo's West*, 283 NLRB 130 (1987). Here the unit in which the election is sought is co-extensive with the certified unit. As there are no other issues or reasons to preclude processing the petition in this case, I have decided to direct an election in this case.

CONCLUSIONS AND FINDINGS

⁴ In addition to the evidence showing that the Union represented the employees in the unit for purposes of collective bargaining, and let the unit employees attend Union meetings and participate in a contract ratification and/or strike authorization vote, I take administrative notice that in *Laidlaw Transit, Inc.*, 331 NLRB No. 63 (2000), the Board found the Union to be a labor organization. The Union also stipulated to its labor organization status in the two prior Region 32 representation cases named herein. Under these circumstances, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act. *Mac Towing, Inc.*, 262 NLRB 1331 (1982).

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time pick-up bus drivers, van drivers, aides, trainers, routers, and dispatchers employed by the Employer at its Hayward and Livermore, California facilities, excluding all mechanics, plant and office clerical employees, guards, all other employees, and supervisors as defined in the Act.⁵

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by TEAMSTERS LOCAL 78, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO. The date, time, and

⁵ The unit description in the 2004 certification listed the classification "guards" twice, both times in the excluded employees section. Because it was redundant, I have deleted one of those references in the unit description above.

place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **APRIL 8, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. As the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 (three) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full

working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **APRIL 15, 2005**. The request may **not** be filed by facsimile.

Dated at Oakland, California this 1st day of April, 2005.

Alan B. Reichard
Regional Director
National Labor Relations Board
Region 32

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